



*Ginger*  
Attorney General  
STATE CAPITOL  
Phoenix, Arizona 85007

Robert R. Corbin

March 30, 1981

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

Mr. Michael G. Prost  
Deputy County Attorney  
Office of the County Attorney  
of Coconino County  
Coconino County Court House  
Flagstaff, Arizona 86001

Re: 181-051(R81-018)

Dear Mr. Prost:

We have reviewed your January 28, 1981 concurrence with an opinion dated December 30, 1980, written by the law firm of Mangum Wall, Stoops & Warden, legal counsel to the Flagstaff public schools. Because the question whether a student qualifies as a "handicapped child" within the purview of A.R.S. § 15-761.4 (formerly A.R.S. § 15-1011.3) necessarily depends upon the particular facts of each specific situation, we cannot review individual cases. We are revising your opinion, however, to set forth the criteria which must be met before a student can be counted as a "handicapped child" under A.R.S. § 15-761.4.

The child must be evaluated and receive an Individualized Education Program (IEP) pursuant to A.R.S. § 15-766 (formerly A.R.S. § 15-1013) and A.C.R.R. R7-2-401.D. The IEP must satisfy the definition of "special education" under A.R.S. § 15-761.5 (formerly §15-1011.5). The child must also receive services, whether instructional or ancillary, from a teacher certificated in special education. See 20 U.S.C. § 1401.16; A.R.S. §§ 15-201.A.4 and 15-761.5 (formerly A.R.S. § 15-1011.5). If a child is able to receive an appropriate education without requiring any services from a certificated special education teacher, he is not "handicapped," within the scope of A.R.S. § 15-943 (formerly A.R.S. § 15-1202.05.2).

Because, as we mentioned, the answer to the posited question depends upon specific fact situations, individual cases can be resolved only through discussion between school districts and the State Department of Education, subject to judicial review.

Sincerely,

*Bob Corbin*

BOB CORBIN  
Attorney General



OFFICE OF

## County Attorney

COCONINO COUNTY  
COCONINO COUNTY COURT HOUSE  
Flagstaff, Arizona 86001  
774-5011

JOHN VERKAMP  
COUNTY ATTORNEY

January 28, 1981

1-30-81 pc  
POLLARD  
R81-018

The Hon. Robert K. Corbin  
Attorney General  
1700 West Washington  
State Capitol Building  
Phoenix, AZ 85007

EDUCATION OPINION  
ISSUE NO LATER THAN

RE: Inclusion of Physically Handicapped 3-31-81  
Students in Special Education Census

Dear Mr. Corbin:

In accordance with A.R.S. §15-122(B), I am submitting the enclosed school opinion regarding the above subject for your review.

This opinion was prepared for the Flagstaff School District by the law firm of Mangum, Wall, Stoops & Warden, and this office concurs in that opinion. You should be aware that this matter arose from an audit of the Flagstaff School District by the Department of Education. As a result of that audit, the Flagstaff School District was not permitted to count two wheelchair students in its special education census. This office believes that the interpretation of the law by the Department of Education in this matter is in conflict with the plain language of the special education statutes in Title 15 for the reasons stated in the enclosed opinion. We are requesting your concurrence as to that opinion.

Please call me if you have any questions about this matter.

Yours very truly,

Michael G. Prost  
Deputy County Attorney

MGP/bk

cc: Dr. David Williams  
Mr. A. Dean Pickett, Esq.

Enclosure



OFFICE OF

## County Attorney

COCONINO COUNTY  
COCONINO COUNTY COURT HOUSE  
Flagstaff, Arizona 86001  
774-6011

JOHN VERKAMP  
COUNTY ATTORNEY

R81- 018

January 27, 1981

Dr. David Williams  
Superintendent  
Flagstaff Public Schools  
701 North Kendrick  
Flagstaff, AZ 86001

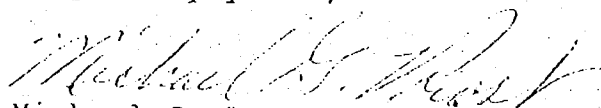
RE: Inclusion of Physically Handicapped Students  
in Special Education Census

Dear Dr. Williams:

I have carefully reviewed the opinion regarding the above subject which was written by your attorney, Mr. A. Dean Pickett of the law firm of Mangum, Wall, Stoops & Warden, on December 30, 1980. In addition, I have discussed the underlying facts with both you and Mr. Pickett. This letter is to inform you that this office concurs with the written opinion of Mr. Pickett on this subject.

In accordance with A.R.S. §15-122(B), and pursuant to your request, I am forwarding a copy of Mr. Pickett's opinion to the Attorney General for his early concurrence.

Very truly yours,

  
Michael G. Prost  
Deputy County Attorney

cc: Hon. Robert K. Corbin ←  
Mr. A. Dean Pickett, Esq.

Enclosure

MGP/bk

RECEIVED JAN 2 1981

MANGUM, WALL, STOOPS & WARDEN

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RICHARD E. CHAMBLISS

R81- 018

January 7, 1981

John G. Verkamp III, Esq.  
Coconino County Attorney  
Coconino County Courthouse  
Flagstaff, AZ 86001

RE: Opinion Rendered to Flagstaff Public Schools

Dear Mr. Verkamp:

This firm is legal counsel to the Flagstaff Unified School District. We recently rendered the enclosed opinion to Dr. David Williams, Superintendent, concerning inclusion of physically handicapped students in the special education census. Dr. Williams has requested that we forward the opinion to you for your review, and if appropriate, concurrence, after which it is our request, and his, that you transmit your opinion to the Attorney General for his review in accordance with A.R.S. §15-122.B.

Thank you very much for your kind assistance in this matter.

Yours very truly,

MANGUM, WALL, STOOPS & WARDEN

*A. Dean Pickett*  
A. Dean Pickett

ADP/lh  
cc: Dr. David A. Williams  
Encl.

MANGUM, WALL, STOOPS & WARDEN

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OF COUNSEL

December 30, 1980

EDUCATION OPINION

ISSUE NO LATER THAN

3-31-81

1-30-81 bc  
POLLARD  
R81-018

Dr. David Williams, Supt.  
Flagstaff Public Schools  
701 N. Kendrick  
Flagstaff, AZ 86001

RE: Inclusion of Physically Handicapped Students  
in Special Education Census.

Dear Dr. Williams:

You have requested our legal opinion concerning  
the following question:

Is a student classified as a 'handicapped  
child' by virtue of being 'physically  
handicapped', as defined in A.R.S. §15-  
1011.3., to be included in the 'student  
count' provided for in A.R.S. §15-1202.05.2.,  
as a handicapped student, where such student  
does not receive instruction from a design-  
ated special education teacher, but rather,  
with the receipt of ancillary services from  
the school district, receives education in  
the normal classroom setting?

As a starting point, the statutes prescribe the  
definition of handicapped child, at §15-1011.3. as:

[a] A child of lawful school age who due  
to present physical, mental or emotional  
characteristics or a combination of such  
characteristics is not afforded the oppor-  
tunity for all-around adjustment and progress  
in regular classroom instruction and who  
needs special instruction, special ancillary  
services or both to achieve at levels commen-  
surate with his abilities. Handicapped child  
includes the following:

(f) 'physically handicapped' means  
a child who has a physical handicap  
or disability, as determined by

D. Williams  
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evaluation pursuant to §15-1013, which impedes his educational progress in the regular classroom situation without the support of special classes or special services designed to promote his educational development, and whose intellectual development is such that he is capable of being educated through a modified instructional environment.

There are ten sub-categories under the definition of "handicapped child", including "physically handicapped" among them:

- (a) Educable mentally handicapped
- (b) Seriously emotionally handicapped
- (c) Hearing handicapped
- (d) Homebound or hospitalized
- (e) Multiple handicapped
- (f) Physically handicapped
- (g) Learning disabled
- (h) Speech handicapped
- (i) Trainable mentally handicapped
- (j) Visually handicapped

The definition of "physically handicapped" is significant in that it would include the student in need of "special classes", but in addition would include within its definition a student whose needs can be met solely through the provision of "special services designed to promote his educational development." Going back to the general definition of "handicapped child" such a student would include not only one who needs "special instruction", but also a student simply in need of "special ancillary services...to achieve at levels commensurate with his abilities."

These definitions are followed by §15-1017.A., which provides:

All students as defined by §15-1011 shall be included in the entitlement to state aid computed as provided in Chapter 12, Article 1 of this title and apportionment made as provided in §15-1212. [Emphasis added].

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Thus, no exceptions are made for any of the ten categories of "handicapped child", nor is a distinction drawn between students attending special classes and students enrolled in the regular classroom setting with the assistance of ancillary services.

The "entitlement to state aid" mentioned in §15-1017 is computed based upon a "student count" and is used, together with other totals, to calculate the "base support level" provided for in §15-1201.05. Different weights are assigned, depending upon the nature of the program provided for handicapped students. The programs described for physically handicapped students are included within the "group B" category, defined in §15-1202.02.B.8. Within that particular category there are two sub-categories, those for physically handicapped resource programs ("PH-R"), and for physically handicapped self-contained programs ("PH-SC").

Once the "base support level" is calculated, using the student count for all handicapped students, as required by §15-1017.A., further mathematical calculations are performed, based upon these basic figures, after which the State Board of Education is required to "apportion state aid from appropriations made for such purpose to the several counties on the basis of state aid entitlement for the common, high and unified school districts in each county", as required by §15-1212.

The only apparent restriction, in the case of handicapped students, is found at §15-1202.10.F:

The additional weight for state aid purposes given to special education as provided in §15-1202.05 shall be given to school districts only if special education programs comply with the provisions of Chapter 10 of this title and the conditions and standards prescribed by the superintendent of public instruction pursuant to rules and regulations of the State Board of Education for pupil identification and placement pursuant to §§15-1013 and 15-1014.

These latter two sections provide for evaluation and review of special education placements for students. It should be noted that the term "special education", defined in §15-1011.5.,

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is broad ranging, and includes "the adjustment of the environmental factors, modification of school curricula and adaptation of teaching methods, materials and techniques to provide educationally for those children who are gifted or handicapped to such an extent that they do not profit from the regular school curricula or need special education services in order to profit."

In summary, among the many criteria for determining whether a student is to be included within the "student count" as "physically handicapped", and thus to qualify the school district to receive state aid to assist in that student's education, there is no requirement that the student be receiving instruction from a special education teacher. The only requirements are that a student fits the definitions of "handicapped child" and "physically handicapped", found in §15-1011, that the program provided for such a student by the school district meets the definition of "special education" found in that section, and that the program meets the requirements of 15-1202.10.F, requiring compliance with state standards for special education programs and for evaluation techniques. This conclusion is required by §15-1017.A. which requires that "all students as defined by 15-1011" are to be included in the entitlement to state aid.

The question has been raised whether the exclusion of students who are not instructed by special education teachers is required by the legislative intent of the Arizona legislature. Although we do not have before us any statements of such legislative intent, beyond those clearly expressed in the statutes, a further inquiry in this area, under the circumstances here, is not required in view of the clarity of the statutory language. It is a general rule of statutory interpretation that if the language of the statute is plain and unambiguous, and can be given but one meaning which does not lead to an impossibility or absurdity such as cannot be contemplated that the legislature intended, courts will follow that meaning. Garrison v. Luke, 52 Ariz. 50, 78 P2d 1120 (1938). "In determining the intent of the legislature, the words of the statute are to be given their ordinary meaning, unless it appears from the context that a different meaning should control." State v. Schoner, 121 Ariz. 528, 591 P2d 1305 (App. 1979).

The statutes prescribing the definition for "handicapped" students, and providing for their inclusion in calculations for state entitlement, are clear on their face. Where §15-1017.A. calls for inclusion of "all" students as so defined, and the statute does not, either directly or by implication, exclude students who may not be receiving instruction from a special education teacher, the statutes are clear.



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on their face, and the legislative intent is well expressed there.

As a final note, the education of handicapped students in the normal classroom setting by regular instructors is specifically called for in the legislation, whenever possible. Section 15-1015.A. provides:

The governing board of each school district or the county school superintendent shall:

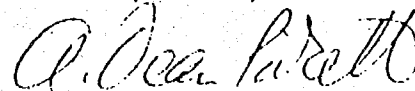
3. To the extent practicable, educate handicapped children in the regular education classes. Special classes, separate schooling or other removal of handicapped children from the regular educational environment shall occur only if, and to the extent that the nature or severity of the handicap is such that education in regular classes, even with the use of supplementary aids and services, cannot be accomplished satisfactorily.

It was clearly not the legislature's intent to specifically encourage education by regular instructors in a normal classroom setting, while at the same time prohibit state funding necessary to support such programs, but provide such funding only when the handicapped student is segregated and instructed by special education teachers.

If you have any further questions on these matters, please contact us.

Very truly yours,

MANGUM, WALL, STOOPS & WARDEN



A. Dean Pickett

ADP/lh